

This letter discusses the new provisions of P. A. 92-0779 with regard to sales of building materials for incorporation into real estate located in Illinois enterprise zones. See 35 ILCS 120/5k. (This is a GIL).

September 17, 2002

Dear Xxxxx:

This letter is in response to your letter dated June 12, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

Our company is in the construction contracting business. We sometimes work on construction projects that are granted exemption from Illinois Sales Tax through local Enterprise Zone participation. My reason for writing is to obtain a clarification regarding the taxable nature of certain purchases that we make for inclusion in these projects.

It is my understanding that we may purchase material for use on an Enterprise Zone project on a tax-exempt basis so long as the Enterprise Zone regulations of the Illinois municipality where the vendor (the company from which we are purchasing these materials) is located 'accepts' the exempt status being granted by the Enterprise Zone of the Illinois municipality where the construction project is located. If this summary understanding is incorrect, I would appreciate your correction.

I have two questions dealing with specific examples of purchases that are not so clearly described as above - they are:

1. Purchases of materials from a vendor located in Municipality 'B' for use on an exempt project within the Enterprise Zone of Municipality 'A' but where Municipality 'B' has no Enterprise Zone program in effect whatsoever. Does 'B's' failure to have such a 'Zone program' in effect play any role in the exempt status of the purchase? Is this purchase exempt, or taxable?
2. Purchase of materials from vendors located in another state. We often purchase materials from vendors located in other states, which collect Illinois sales taxes on our purchases, and then remit those taxes to Illinois. In other cases, where the out-of-state vendor does not collect Illinois tax, we remit the taxes directly to Illinois ourselves. Are these purchases from out-of-state vendors eligible for the same Enterprise Zone exemption as purchases made from vendors within the state?

I would appreciate your earliest response, as we are now involved with another Enterprise Zone project, and we need clarification and direction in order to maintain the exempt status of purchases for this new project. I will look forward to receiving your earliest reply. Thank you.

The law governing the enterprise zone building materials exemption from sales tax has undergone some changes within the last year. Effective August 6, 2002, P. A. 92-0779 made some changes to 35 ILCS 120/5k that sets forth the exemption.

Between January 1, 2001 and August 6, 2002, with respect to question #1, the sale in Municipality B of building materials for incorporation into real estate located in an enterprise zone in Municipality A would have been exempt. This is because the State provides for the exemption subject to local enterprise zone building materials ordinance limitations. In your case, your letter indicates Municipality B has no enterprise zone ordinance, so no restrictions apply to that sale. If, however, Municipality B had an enterprise zone and the local enterprise zone ordinance provided that the exemption would apply only to sales of building materials for incorporation into the Municipality B enterprise zone, then the sale of building materials for incorporation into Municipality A's enterprise zone would not be exempt. However, since Municipality B has no enterprise zone ordinance, the exemption for sales of building materials in Municipality B is not limited.

Between January 1, 2001 and August 6, 2002, with respect to question #2, purchases of building materials from out-of-State vendors for incorporation into real estate located in Illinois enterprise zones could be made tax exempt.

Beginning August 6, 2002, under the new legislation the exemption now applies to "qualified sales" of building materials. A "qualified sale" is a sale of building materials that will be incorporated into real estate as part of a project for which a Certificate of Eligibility for Sales Tax Exemption has been issued. As long as the following documentation is provided, purchases can be made tax-free at any location. The administrator of the enterprise zone in which the building project is located must issue the Certificate of Eligibility for Sales Tax Exemption.

To document the exemption, the purchaser must provide the retailer with a Certificate of Eligibility for Sales Tax Exemption which contains:

- 1) a statement that the building project identified in the Certificate meets all the requirements for the building material exemption contained in the enterprise zone ordinance of the jurisdiction in which the building project is located,
- 2) the location or address of the building project, and
- 3) the signature of the administrator of the enterprise zone in which the building project is located.

The purchaser must also provide the retailer with a certification that contains:

- 1) a statement that the building materials are being purchased for incorporation into real estate located in an Illinois enterprise zone,
- 2) the location or address of the real estate into which the building materials will be incorporated,

- 3) the name of the enterprise zone in which that real estate is located,
- 4) a description of the building materials being purchased, and
- 5) the purchaser's signature and date of purchase.

The new law also provides that the municipalities or counties that created the enterprise zone into which the building materials will be incorporated may neither require nor prohibit the purchase of building materials from any retailer or class of retailers in order to qualify for the exemption.

As you can see, under the new law, with respect to question #1, it does not matter that Municipality B has no enterprise zone program. What matters is that the retailer in Municipality B properly documents the "qualified sale." With respect to question #2, purchases from out-of-State retailers that would constitute "qualified sales" are considered tax exempt.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

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